

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant: Sandra Weisman
62 Kellogg Avenue, Amherst, MA 01002

Date Application filed with the Town Clerk: April 3, 2007

Nature of request: Petitioner seeks a Special Permit, under Section 5.011 of the Zoning Bylaw, to construct a supplemental apartment.

Location of property: 62 Kellogg Avenue, Map 11C, Parcel 295, R-G zone.

Legal notice: Published in the Daily Hampshire Gazette on April 11 and April 18, 2007, and sent to abutters on April 10, 2007.

Board members: Ted Rising, Russ Frank and Jane Ashby

Submissions: The applicants submitted the following documents:

- A set of drawings, entitled "Weisman Residence", prepared by Integrity Development and Construction, Inc., revised March 30, 2007, including the following:
 - Sheet A-00, Town of Amherst GIS Maps
 - Sheet A-01, Existing Conditions
 - Sheet A-02, Proposed Floor Plans and Renderings
 - Sheet A-03, Proposed Elevations
- A Management Plan
- A letter dated May 17, 2007, from Sandra Weisman, requesting that the application be withdrawn without prejudice.

Town staff submitted the following documents:

- Memorandum from the Planning Department, dated April 20, 2007, commenting on the application
- A letter from Brackett & Lucas, Counselors at Law, dated May 14, 2007, presenting an opinion on whether mechanical rooms are included when calculating gross square footage.

Site Visit: April 24, 2007

At the site visit the Board was met by Peter Jessop, of Integrity Development and Construction, Inc. The Board observed the following:

- The location of the property, on a corner, at a bend in the road on Kellogg Avenue, within walking distance of the Town Center;
- The interior of the existing garage and basement, including the existing oil tank, sewer pipe and electrical panel;
- The back and side yards and the proximity of the house to the property line to the north;
- The small driveway which was not large enough to comfortably accommodate more than three cars.

Second Site Visit: May 15, 2007

The Board conducted a second site visit on May 17th. The Board was met by Sandra Weisman, the applicant, and Kyle Wilson, of Integrity Development and Construction, Inc. The Board observed the following:

- The small driveway which could be widened to accommodate four cars;
- The proposed layout of the new apartment in the existing basement and garage;
- The stains on the basement floor which may have been the result of moisture;
- The location of the existing utilities.

Public Hearing: April 26, 2007

At the public hearing Sandra Weisman, the applicant, and Kyle Wilson of Integrity Development and Construction, Inc. presented the petition. They made the following comments:

- The floor plans for the supplemental apartment include a large bedroom, a small study, a large open living room and a kitchen.
- There will be French doors where the existing garage doors are located in order to add light to the basement space;
- The area marked as “vestibule” on the plans will be the study;
- Windows will be added in the bedroom area and on the west side of the kitchen;
- A door will be added on the north side of the house for egress;
- The bedroom will also have a large window.

Mr. Rising asked whether there would be access to the mechanical room from the kitchen. Ms. Weisman stated that there will be two mechanical rooms. The one in the corner contains the sewer pipes for the whole house. The electrical panel will stay in the bedroom, but another one will be added upstairs for the main part of the house. There will be access from the apartment to the mechanical rooms.

Ms. Ashby asked about square footage. Ms. Weisman stated that the apartment will be approximately 800 square feet in size. Mr. Wilson added that the 800 square foot measurement excludes the two mechanical rooms. Mr. Frank asked if the mechanical rooms would be closed off by doors and walls. Mr. Wilson stated that there would be doors and walls separating the mechanical rooms from the rest of the apartment.

Kyle Wilson stated that the sewage ejector pipe for the plumbing system needed to be in the mechanical room in the north east corner of the house because that is the point closest to the sewer pipe that goes out to the street. Mr. Wilson stated that this sewage ejector pipe would serve both dwelling units. He confirmed that the mechanical room would be built around the sewage ejector pipe, and that the room is not in place now. He noted that the plans call for replacement of the furnace and the hot water tank for the entire house.

Ms. Ashby stated that Section 5.011 of the Zoning Bylaw limits the size of supplemental apartments to 800 gross square feet. She expressed her concern that the mechanical rooms needed to be included in the gross square footage and that the apartment would therefore be over the 800 square foot limit.

Ms. Weeks stated that according to Building Code gross floor area includes “anything that deals with the apartment”. She stated that the mechanical rooms are meant to serve both spaces, not just the basement apartment. Ms. Weeks cautioned that the mechanical rooms need to be accessible to the owner and that the interior space of the apartment was not accessible to the owner although it would be to the tenant. She stated that the owner does not have the right to enter the tenant’s space without his permission.

Mr. Frank suggested installing a door from the outside that would go directly into the mechanical room. Mr. Wilson agreed that the floor plan may need to be revised to clarify the access to the mechanical spaces.

There was a discussion about the definition of “gross floor area” and whether it includes the mechanical area or not. The Board requested that the staff contact Interim Town Counsel, Gary Brackett, to get an opinion on the definition of “gross floor area”.

Mr. Rising summarized the outstanding issues as follows:

- The need to provide access for both tenant and owner to the mechanical rooms;
- The need to clarify the definition of gross floor area;
- The need to provide parking for four (4) cars;
- The need for a parking plan that would allow each car to exit the driveway without requiring any other car to move.

There was further discussion about the issue of parking.

Mr. Rising asked if the owner would be “in residence” and stated that there can be no lodgers, boarders or roomers in the main portion of the house if the supplemental apartment is permitted. Ms. Weisman stated that she is a resident of the house and that she understands the other limitations.

Mr. Frank asked about the grading for the back door which will be created from an existing window on the north side of the house. Mr. Wilson explained that the grading for this new door will be confined to Ms. Weisman’s property. There will be no grading on the adjacent property. The walk will stay next to the deck and will follow the grade around to the driveway. Drainage will be directed towards the driveway. There will be no need for a retaining wall.

John Domian of 86 Kellogg Avenue stated that he was not in favor of more apartments in the neighborhood. He stated that there are now many apartments on Kellogg Avenue and the rear yards of these houses have become parking lots. The character of the neighborhood is changing. He is against this proposal. He is especially concerned about parties, since they are already a problem in other houses nearby.

Cheryl Ann Domian of 86 Kellogg Avenue stated that there are parties in the neighborhood at 1:00 and 2:00 a.m. Also, there are a lot of cars and it is not possible to walk safely along the street.

Ms. Ashby asked about the spot on the basement floor that appeared to be a damp, wet spot. Ms. Weisman replied that she is concerned about dampness and that the only time that the basement was wet was when the water main was broken by the Town. She stated that the basement is never wet or damp.

Ms. Weisman also stated that the house next door is a multi-family house that is full of students.

Ms. Ashby requested that there be another site visit before continuing the discussion on this case.

Mr. Rising recommended to the applicant that she could withdraw the application without prejudice or continue the hearing to a future date. After consulting with the applicant, Mr. Wilson stated that the applicant wished to continue the hearing to a future date. Mr. Wilson stated that he would investigate the housing code with respect to the questions that had arisen during the hearing with respect to gross floor area and access to the mechanical room.

Ms. Ashby MOVED to continue the public hearing to May 17, 2007. Mr. Frank SECONDED the motion. The Board VOTED unanimously to continue the public hearing.

Continued Public Hearing: May 17, 2007

Mr. Rising began the continued public hearing by noting that the Board had received a letter from Interim Town Counsel, Brackett and Lucas, dated May 14, 2007, with respect to the issue of gross floor area. Mr. Rising summarized the letter as follows:

- There are two areas of the basement that are proposed to be used for services.
- There was a question about whether the service areas should be counted as part of the gross floor area.
- There is no specific definition of gross floor area in the Bylaw.
- An Appeals Court in 2002 upheld the Zoning Board's interpretation of gross floor area as meaning habitable space and therefore it does not include the mechanical rooms.

Mr. Wilson stated that the applicant wished to ask the Board for advice regarding her application. She would like to revise the floor plan and replace the mechanical systems, to install new hot water tanks and a hot air furnace. She wishes to change her application to ask for a Special Permit for a two-family house under Section 3.321 of the Zoning Bylaw. Christine Brestrup, Senior Planner stated that the Board may choose to consider this application under Section 3.321, Two Family House.

The Board reviewed the Zoning Bylaw with respect to the requirements for a two-family house. Section 3.321 of the Zoning Bylaw allows a two-family house in the R-G District with a Special Permit from the Zoning Board of Appeals. The Board examined the dimensional requirements in Table 3 of the Zoning Bylaw. Ms. Brestrup reviewed the dimensional requirements for the Board and stated that the property met the dimensional requirements for a two-family house. She stated that the property was non-conforming as to the front setback requirement.

The Board discussed whether Ms. Weisman should continue under the current application or withdraw and resubmit an application for a two-family house. The Board expressed concern about the need to let the abutters know about the change in the request. Mr. Rising stated that it was the "sense of the Board" that if the applicant wished to apply for a two-family house that the application needed to be re-advertised in order to give the abutters a chance to comment.

Mr. Rising asked for further public comment.

Charles Hopkins of 18 Windridge Road asked for a clarification as to what power, if any, the neighbors have in the request for a Special Permit. He also asked if a two-family house would be allowed and if so why the applicant needs to appear before the Zoning Board.

Mr. Rising stated that the neighbors have the opportunity to submit letters and to offer testimony on applications that come before the Board. He stated that a two-family house is only allowed in the R-G District with a Special Permit from the Zoning Board of Appeals.

After learning that the Board's site visit was on a Tuesday afternoon, Mr. Domian suggested that the Board visit the neighborhood on Friday or Saturday night when the noise problems occur. He stated that the neighborhood used to be almost entirely single-family homes. Now it is primarily student housing along the western portion of Kellogg Avenue. Student housing is not compatible with elderly housing and housing for the disabled, such as exists in the Ann Whalen Apartments, nor with the single family homes located in the neighborhood.

Frank Murphy of 162 Triangle Street stated that if a supplemental apartment were to be permitted, the house would be required to be owner-occupied.

Andrew Bohne of 53 Kellogg Avenue stated that he lives across the street from the property being considered. He stated that the houses are all single-family homes from 62 Kellogg Avenue on. He is concerned about increased parking, increased pavement and an increased number of residents in the neighborhood if the Special Permit is granted.

Katherine Hopkins of 18 Windridge Road stated that she is concerned about the creep of multi-unit dwellings. She stated that this corner is one of the busiest and that Kellogg Avenue has become a "short-cut" from North Pleasant Street to Triangle Street. The traffic moves quickly and there are a lot of families with young children in the neighborhood. She is concerned about the additional traffic and the turning in and out of the driveway just at the point of the curve in the road. She is concerned about setting a precedent for more multi-family homes in the neighborhood.

Mr. Wilson and Ms. Weisman submitted a letter requesting withdrawal without prejudice of the application and a waiver of the fee for the next application.

Mr. Rising stated that he is personally sympathetic to the idea of a supplemental apartment but that a two-family house may be more problematic. Ms. Ashby and Mr. Frank indicated that they shared Mr. Rising's opinion on this matter.

Zoning Board Decision

Mr. Frank MOVED to accept the request for WITHDRAWAL WITHOUT PREJUDICE and the waiver of the fee for a subsequent application. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to accept the withdrawal without prejudice and the waiver of the fee, for the application for a supplemental apartment, as applied for by Sandra Weisman, at 62 Kellogg Avenue (Map 11C, Parcel 295, R-G Zone).

EDWARD RISING

RUSSELL FRANK

JANE ASHBY

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.

NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.